

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

JANET WILMORE,

Plaintiff,

vs.

**CALVIN A. ARNOLD and UNITED
STATES OF AMERICA,**

Defendants.

**CIVIL ACTION NO.
5:08-CV-261-HL**

ORDER

Currently before the Court is Defendant United States of America's Motion to Dismiss (Document No. 8), filed pursuant to Federal Rules of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction.

After consideration of said motion and argument of counsel, Defendant United States of America's Motion to Dismiss is Granted based solely on Defendant United States of America's contention that Plaintiff has filed her lawsuit prematurely in violation of 28 USC § 2675(a). As such, the Court is without subject matter jurisdiction as to Plaintiff's claims against Defendant United States of America. Gregory v. Mitchell, 634 F.2d 199, 204 (5th Cir. 1981).

Plaintiff's Complaint is dismissed only as it relates to claims against Defendant United States of America. Plaintiff's Complaint is dismissed, without

prejudice, and with the right to re-file against Defendant United States of America as a party defendant following a final denial by the United States Air Force of Plaintiff's Administrative Claim (Standard Form 95) or, following six (6) months from the filing of Plaintiff's Administrative Claim if the United States Air Force has failed to make a final disposition of Plaintiff's Administrative Claim.

Plaintiff's Complaint and claims remain pending against Defendant Calvin A. Arnold.

SO ORDERED, this 29th day of October, 2008.

s/ **Hugh Lawson**
HUGH LAWSON
Judge, United States District Court
Middle District of Georgia

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REVIEWED AND AGREED TO:

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